IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8423 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHIKHABHAI CHATURBHAI PARMAR

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

1. Special Civil Application No. 8423 of 2004

MS BHARTI RANA FOR MR ANIL S DAVE for Petitioner No. 1

MRS HB PUNANI, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 03/11/2004

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 27-4-2004 passed by the Police Commissioner, Surat City against the

detenu who has been declared as a dangerous person.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, her activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner at length and learned AGP for the respondents. I have also perused the material on record. Learned advocate for the petitioner has stated that three criminal cases have been registered against the detenu and last case was registered on 2-3-2004 before Surat Railway Police Station C.R.No.I-43 of 2004 while detention order was passed on 27-4-2004 and there is a delay of more than one and half months in passing the order. Learned AGP has fairly admitted the same. He has relied upon a judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

4. It appears that last offence registered against the petitioner was dated 2-3-2004 and order of detention was passed on 27-4-2004 based on this offence and hence, there is a delay of more than one and half months in passing the order.

5. Learned advocate for the petitioner has also stated that representation has been submitted by the petitioner through advocate on 30-6-2004 to the detaining authority and it was rejected on 21-7-2004 and communication of rejection of representation has been received from the authority on 24-7-2004 and therefore there is a delay in deciding the representation and communicating the decision. He has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

6. It appears that representation dated 30-6-2004 of the petitioner has been rejected on 21-7-2004 and communicated on 24-7-2004 to the detenu. Hence, there is a delay in deciding the representation and communicating the decision to the detenu. No affidavit has been filed either by the detaining authority explaining satisfactorily the delay caused in passing the order of detention and deciding the representation and communicating the decision to the detenu. Therefore, in view of the above judgments relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other

points.

7. The petition is allowed. The impugned order of detention dated 27-4-2004 passed against the detenu Bhikhabhai Chaturbhai Parmar is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)
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